In the Supreme Court of the United States

OCTOBER TERM, 1937

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

WILLIAM H. TUNNICLIFFE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered in the above entitled cause on March 9, 1937, reversing the decision of the United States Board of Tax Appeals.

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 15–21) is a memorandum opinion which is not reported. The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 29) is reported in 88 F. (2d) 873.

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JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 9, 1937. (R. 29.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether amounts received by the respondent as compensation for services as liquidator of certain State banks, paid entirely out of funds of the banks, are immune from Federal taxation.

STATUTES AND REGULATIONS INVOLVED

The pertinent statutes and regulations will be found in the Appendix in the petition for a writ of certiorari filed simultaneously herewith in the case of *Helvering* v. *Therrell,* No. —.

STATEMENT

The facts in this case as stated in the opinion of the Board of Tax Appeals (R. 15–21) may be summarized as follows: The respondent, in 1930, was appointed as liquidator of eleven banks in the State of Florida, these appointments being made by the State Comptroller pursuant to Section 19 of Chapter 13576 of the General Laws of Florida (1929), Vol. 1. (R. 16.)

The respondent took no oath of office but gave a bond under each appointment. He served as liquidator of some or all of the eleven banks during 1931 and 1932, and received as compensation for his

services the amount of $5,833.33 in 1931, and $25,237.36 in 1932. The amount of the compensation which he received was fixed by the Comptroller of the State of Florida at a certain percentage of the funds collected by him in liquidating the various banks, and was paid entirely out of funds of the institutions liquidated. (R. 17–18.) The respondent did not include in his income tax returns for either 1931 or 1932 the compensation received by him for services as liquidator. He stated that this action was taken by him on advice from the Internal Revenue Agent in charge at Jacksonville, Florida. (R. 18.)

The Commissioner of Internal Revenue determined that respondent was not exempt from taxation and appeal was taken to the United States Board of Tax Appeals. The Board of Tax Appeals sustained the Commissioner and the respondent sought review of that action by the Circuit Court of Appeals for the Fifth Circuit. That court reversed the decision of the Board, one judge dissenting.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the compensation received by the respondent as liquidator was not subject to Federal income taxation.

2. In failing to hold that the respondent was neither an officer, an employee, nor an agent of the

State engaged in an essential governmental function.

3. In failing to hold that taxation of the compensation received by the respondent out of funds of the insolvent banks imposes no prohibited burden upon the State.

REASONS FOR GRANTING THE WRIT

The instant case presents the identical question involved in *Helvering* v. *Therrell,* and was decided by the court below contemporaneously with and upon the authority of its decision in that case. The Government has this day filed a petition for a writ of certiorari in that case, and respectfully refers the Court to the reasons stated in that petition as reasons why the present petition should be granted.

Wherefore, it is respectfully submitted that this petition should be granted.

STANLEY REED,
Solicitor General.

JUNE, 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1937